

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16187 of Ilia and Darina Pavlov, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 201.1) to allow general office use, basement through the second floor, in a WHOD/R-1-B District at premises 3301-03 45th Street, N.W. [Square 1603, Lots 1 and 2 (38)].

HEARING DATE: December 18, 1996  
DECISION DATE: December 18, 1996

DISMISSAL ORDER

During preliminary matters, it was revealed that members of ten households residing in the immediate vicinity of the site were represented by counsel and wanted the hearing on the case postponed. The reasons were: (1) there is substantive disagreement between the applicants and residents of the neighborhood and a postponement would give the parties an opportunity to attempt to resolve the issues; (2) two appeals challenging the underlying facts of the case have been filed; and, (3) the applicants failed to meet the posting requirements.

Counsel representing the applicants objected to the motion for postponement. The applicants' counsel indicated that the citizens request to postpone the hearing was not offered in good faith and was merely an attempt to delay the hearing; the pending appeals were non-meritorious and a tactic to cause additional expense to the owners; and, the affidavit of posting was not timely filed because of mis-communication between staff and the applicants and a three-day waiver was requested.

The Board denied the request to postpone the hearing.

After the case was called, the Board discovered that the applicants had not filed a pre-hearing statement explaining the rationale for the variance. The information the applicants submitted into the record consisted of the completed application, a Surveyor's Plat, a referral letter from the Zoning Administrator's office, photographs of the property, a listing of properties within a 200-foot radius, and a copy of a certificate-of-occupancy. Also, the Office of Planning had filed a report.

The applicants' counsel indicated that a statement was filed with the Board. The only statement that staff and Board members could locate is a general statement attached to the original application and which contained two sentences, Exhibit No. 6 of the

record. The statement reads as follows: "As owner of the property located 3301-03 45th Street, N.W., for a variance to use property as an office. The operation will be from Monday through Friday."

The Board indicated that pre-hearing procedures stipulate that the applicants' statement should have been filed in advance of the hearing to allow community residents and others who have an interest in the case an opportunity to review the public record. Specifically, Subsection 3316.6 of the Regulations states that "No later than fourteen (14) days before the date of the hearing, the applicant shall file with the Board any additional statements, information, briefs, reports, including reports or statements of expert and other witnesses, plans, or other material that the applicant may wish to offer in evidence at the hearing."

The Board indicated that an applicant may choose to file a written detailed statement in advance of the hearing; it is not a requirement. If a detailed statement is filed, it must be submitted into the record 14 days in advance of the hearing. The written statement provides supplemental information. Applicants may file pre-hearing statements at their discretion. However, without a written pre-hearing statement, which is intended to provide in-depth analysis of the case, the Board is limited to hearing the case primarily on what has been filed and is available in the public record. In the past, the Board has permitted applicants to submit additional information into the record at the time of the public hearing. In those instances, the bulk of the information pertaining to the case (plans, detailed statement or brief, identification of expert witnesses, etc.) was submitted into the public record prior to the hearing. In the subject case, the applicants did not provide any substantive written information to build the case.

The Board determined that a significant part of the case would be centered around building plans. That material would be crucial in determining whether a portion of the building should be used for office space, as requested by the applicant. The Board indicated that the applicants should have submitted the material into the record in advance of the public hearing and that there was not sufficient information on file to support a use variance case.

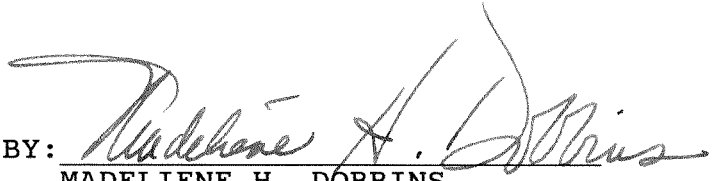
Upon consideration of the above facts, it is hereby **ORDERED** that the application is **DISMISSED, WITHOUT PREJUDICE**, because of the applicants' lack of preparedness.

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VOTE: 3-1 (Susan Morgan Hinton, Sheila Cross Reid and Angel F. Clarens to dismiss; Laura M. Richards opposed to the motion; Herbert M. Franklin not present not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
MADELIENE H. DOBBINS  
Director

FINAL DATE OF ORDER: SEP 18 1997

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16187

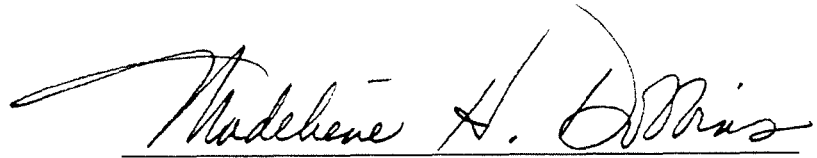
As Director of the Board of Zoning Adjustment, I certify and attest that on SEP 18 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Sylvia J. Rolinski, Esq.  
10400 Eastwood Avenue  
Silver Spring, Maryland 20901

Boris T. Karamanov  
2400 Churchill Road  
Silver Spring, Maryland 20902

Thomas Farrah  
8104 Oxon Hill Road  
Fort Washington, Maryland 20744

Patrick Brown  
1899 L Street, N.W., Suite 500  
Washington, D.C. 20036

  
MADELIENE H. DOBBINS  
Director

DATE: SEP 18 1997